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Guarantee Options for a Settlement of the Conflict over Transnistria

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Any meaningful consideration of guarantee options requires some assumptions about the nature of the underlying settlement. With this in mind, the following discussion draws on comparative experience in two ways. First, it considers the nature of the conflict over Transnistria in a broader context of similar conflicts elsewhere in order to establish the likely dimensions of a settlement. Second, it analyses a range of previous settlement proposals to identify any consensus in these dimensions in order to determine the possible parameters of a settlement in somewhat greater detail.
While not detached from the reality of the conflict over Transnistria, this discussion is in equal measure speculative and hypothetical. It is not meant to commit either side in the conflict or any other party to anything, but to illustrate how different settlement options might be appropriately guaranteed. As a Document informing negotiators and mediators, the following should be read in conjunction with the more general examination in the companion paper "Guarantees and Conflict Settlements".

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I. THE CONFLICT OVER TRANSNISTRIA IN COMPARATIVE PERSPECTIVE

The conflict over Transnistria is a territorial dispute between two conflict parties: Transnistria and Moldova. At the heart of the conflict are questions of sovereignty and territorial integrity, self-governance and joint governance, and appropriate guarantees for both a process of settlement and a final settlement itself. For close to two decades, the situation has been stagnant: a ceasefire agreement signed in 1992 in Moscow between the Russian and Moldovan presidents at the time—Yeltsin and Snegur—established a trilateral peacekeeping mission (Russia, Moldova, Transnistria, later joined by Ukraine) and a security zone along the Dniestr/Nistru River. Protected by these arrangements and a continuing Russian military presence, Transnistria has developed into a de-facto state of its own, albeit without international recognition and heavily dependent on Russia.

In its core parameters, the conflict over Transnistria is not unique, and similar conflicts have been resolved successfully in the past. This experience suggests that any attempt to break the continuing deadlock and move toward a sustainable settlement short of changing currently recognised international boundaries has to provide a framework for a stable relationship between Transnistria and the rest of Moldova. Such a framework needs to account for the territorial status of Transnistria within Moldova (also bearing in mind the status of the existing Gagauz Autonomous Territorial Unit and possibly the status of the city of Bender, currently located in the security zone), the distribution of powers between Chisinau and Tiraspol, and the degree to which to which the two sides share power at the centre. In order to ensure that any agreements are implemented and subsequently operated fully and in good faith, it will be essential to incorporate dispute resolution mechanisms into a settlement. Two issues of the conflict have, in part, an international aspect that needs to be addressed in the negotiation process. These are the so-called Russian dimension of the conflict (the current and future presence of foreign troops and Moldovan demilitarization and neutrality) and the protection of identities of individuals and communities resident in

Transnistria and Moldova as a whole (sometimes more narrowly referred to as the Romanian dimension of the conflict, i.e., the possibility of future unification of Moldova with Romania). Any agreements achieved in these six areas will require strong and viable guarantees in domestic and international law, including security guarantees.

II. A COMPARATIVE ANALYSIS OF PASTSETTLEMENT PROPOSALS

Past settlement proposals for Transnistria broadly fall into two broad categories: those that are concerned with how to get to a settlement and those that are aimed at the what of the actual settlement provisions. It is the latter set of proposals that I shall focus on: 'Report No. 13 of the CSCE Mission to Moldova' (1993), the 'Memorandum on the Bases for Normalisation of Relations between the Republic of Moldova and Transnistria' (1997), the 'Russian Draft Memorandum on the Basic Principles of the State Structure of a United State in Moldova' (2003, the Kozak Memorandum), the 'Proposals and Recommendations of the Mediators from the OSCE, the Russian Federation, and Ukraine with regard to the Transdniestrian Settlement' (2004), and the 'Plan for the Settlement of the Transdniestrian Problem' (2005, the Yushchenko or Poroshenko Plan). As required by the 2005 Ukrainian Plan, the Parliament of Moldova passed a law 'On Fundamental Regulations of the Special Legal Status of Settlements on the Left Bank of the River Nistru (Transnistria)' on 22 July 2005. More recent Moldovan thinking is captured in a 2007 package proposal for a 'Declaration concerning principles and guarantees of the Transnistrian settlement' and, appended to it, a 'Draft Law on the Special Legal Status of Transnistria'. Table 1 summarises the content of the existing proposals.

III. THE WAY FORWARD: ELEMENTS OF A SUSTAINABLE SETTLEMENT

The existing proposals for the settlement of the Transnistrian conflict offer a wide range of different mechanisms to address the multiple and complex problems involved. Despite obvious differences, principal consensus exists in a number of areas and provides the foundation for offering a set of options consistent with the existing consensus.

Territorial status

There is considerable agreement across the existing proposals that the Transnistrian conflict requires some sort of territorial self-government as part of the political-institutional arrangements to be set up by a settlement. None of the proposals excludes such an option to be extended also to other areas in Moldova, notably Gagauzia (where it has existed since 1995) and Bender. Given the different local and local-centre dynamics in each of the three areas, in combination with the general reluctance on the part of Chisinau to federalise the country as a whole, a multiple asymmetric federacy arrangement would seem the most appropriate form of territorial state construction.

Such a multiple asymmetric federacy arrangement would have several advantages. First, the existing arrangement with Gagauzia could remain untouched and/or further developed reflecting a changing situation there independently of the process and content of the Transnistrian settlement. Second, Chisinau and Tiraspol could directly negotiate the substance of Transnistria's settlement (e.g., as foreseen in the various past proposals). Finally, the remainder of the territory of Moldova would remain largely unaffected in terms of existing governance structures.

Such arrangements are not uncommon: devolution in the United Kingdom (although not properly a federacy arrangement because of a lack of constitutional entrenchment), the arrangements for Greenland and the Faroer Isles in Denmark, the five regions with a special autonomy statutes in Italy, and the autonomous communities in Spain all serve as relatively successful examples. Elements of the 1995 Dayton Accords for Bosnia and Herzegovina are also worthwhile considering, as are provisions in Belgium. Beyond such multiple federacy arrangements, other relevant examples include the Åland Islands in Finland, Bougainville in Papua New Guinea, the Autonomous Region of Muslim Mindanao in the Philippines, and Crimea in Ukraine. The arrangements for the Kurdistan Region of Iraq under the 2005 Iraqi constitution are another potentially useful case to draw on.

Given the widespread use of different forms of territorial self-governance in conflict settlements, there is also a widely established and varied practice of guarantees on which mediators and negotiators could draw. Most commonly, federated entities are protected through status entrenchment in legislation and the constitution. This has already been accomplished for the status of Gagauzia: a constitutional anchoring of the status of Gagauzia as a special entity in Moldova

(currently Article 111 of the constitution) and an organic law (dating back to 1995) that specifies, among other things, the competences of Gagauzia. This could be applied to settlements for Transnistria and possibly Bender. At present, changes to his law require a three-fifths majority in parliament. This could be strengthened, in line with suggestions in the Kozak Memorandum and the Mediator Proposals, by requiring the consent of the parliament of the respective entity for any changes to its status or competences. Such a dual approach of constitutional and legal protection has the advantage of firmly entrenching the principle of self-governance in the constitution while offering the Sides greater flexibility in negotiating and revising the concrete ways in which the principle manifests itself in political practice. Spain (e.g., Catalonia), Italy (e.g., South Tyrol), Finland (Åland Islands), Denmark (e.g., Greenland), Indonesia (Aceh), and Ukraine (Crimea) all adopted this approach. The widespread use of this dual entrenchment mechanism strongly suggests that it should be considered for the settlement of the Transnistria conflict as well.

In some cases, such domestic guarantees are complemented by further international guarantees. In Bosnia and Herzegovina, for example, guarantees exist in the form of a multilateral international treaty—the Dayton Accords—to which the Constitution of Bosnia and Herzegovina is appended as an integral part of the 1995 settlement. This constitution defines the status and relationship between the Entities (Republika Srpska and Federation of Bosnia and Herzegovina) and the State. Within the Federation, a separate constitution defines the self-governing status of all cantons, which, reflecting primarily the Federation's ethnic demography, are the principle loci of power and governance in the Federation. The status of Brčko, a territory disputed between the Federation and Republika Srpska, was decided by a mixed local/international arbitration tribunal to which the two Sides had committed at Dayton. The guarantee for the status of Brčko thus derives from both the Dayton Accords and an arbitration process, the implementation of which has been verified and monitored by the institution of the 'Supervisor', established under the Final Award. The example of Brčko may prove relevant for Moldova if the Sides cannot find a consensual solution for the status of Bender.

The status of Northern Ireland is similarly guaranteed internationally. Here the guarantee takes the form of a bilateral treaty between the United Kingdom and Northern Ireland to which the 1998 Agreement was appended. This has strengthened the otherwise weaker protection of the status of Northern Ireland in light of the absence of a written constitution in the UK where a simple act of parliament established the devolved administration in 1998. The explicit recognition of the UK's international obligations under the 1998 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, however, mean that these devolution arrangements can no longer be abrogated or suspended unilaterally by the UK without explicit consent from the Government of the Republic of Ireland. Embedding Transnistria's self-governing status in a bilateral treaty (between Moscow and Chisinau) would be an option for the Sides and could be explicitly linked with the full and final implementation of the 1992 Ceasefire Agreement.

Northern Ireland, and the broader devolution settlement in the UK, is also of interest from the perspective of the use of in/formal, legally non-binding arrangements covering the relationship between Westminster and Belfast (as well as the other devolved authorities). This might be of interest for Moldova inasmuch as the Sides could commit to a range of principles that determine their mutual conduct in terms of coordinating legislation and policy between them, including through the creation of consultation bodies and a determination of their working procedures. Another option might be to make the currently existing Working Groups permanent or extend their existence into a transitional period, both with appropriately amended mandates and terms of reference.

Returning to the issue of linking final conflict settlements to past agreements, and the declaration of such conflict settlements as being in fulfilment of such past agreements, has also been used in the case of South Tyrol. Here the 1946 Gruber-DeGasperri Agreement established the principle of self-government for South Tyrol, and the 1972 Autonomy Statute for the province was considered by the sides as fulfilling Italy's obligation under the 1946 bilateral agreement, which in itself was appended to the peace treaty between the Allies and Italy at the end of the Second World War. The dispute between Austria and Italy over the fulfilment of the 1946 Agreement was finally resolved in 1992 when Austria issued its Declaration of Conflict Settlement.

Table 1: A Comparative Summary of Provisions in Past Settlement Proposals for the Transnistrian Conflict

	Territorial Status	Distribution of Powers	Power Sharing	Dispute Resolution	'Russian' Dimension	'Romanian' Dimension	(Security) Guarantees
CSCE Report (1993)	• Special status for Transnistria, possibly for Bender and Gagauzia, possibly regionalised state	• Exclusive and joint competences listed in detail	• Proportional representation for Transnistria in parliament, top courts and key ministries		• Complete demilitarization • Russian withdrawal	• Option for Transnistrian Secession	• International guarantees, especially CSCE mediation of a agreement
Moscow Memorandum (1997)	• Status Transnistria based on state-legal relations between Transnistria and Moldova within a common state	• Division and delegation of competences • Transnistria to participate in Moldovan foreign policy and to have its own international contacts subject to mutual agreement	• Both sides' agreement required for foreign policy decisions affecting Transnistria • Both sides' agreement required for Transnistrian international contacts	• Each side able to approach guarantors in case of violations, with guarantors to take measures for 'normalisation'			• Both sides as mutual guarantors of their agreement on the status of Transnistria • Ukraine and Russia to act as guarantors for the provisions in the Memorandum and of any future status agreement • OSCE to monitor compliance • Joint PKF to continue • Each side able to approach guarantors in case of violations • Full system of guarantees to be worked out among parties in negotiations
Kozak Memorandum (2003)	• Two federacy arrangements: Moldova-Transnistria and Moldova-Gagauzia	• Exclusive and joint competences listed in detail; • Residual authority with federal subjects	• Pre-determined number of seats for Transnistria and Gagauzia in Constitutional Court and Senate; • Qualified majorities in Senate and Constitutional Court during transition period	• Consultation on international treaties affecting joint competences	• Moldova as a neutral, demilitarized state	• Option for Transnistrian Secession	• Constitutional entrenchment of status, combined with qualified majorities necessary for constitutional amendments

Mediator Proposals (2004)	• Federal State with Transnistria as a federal subject	• Exclusive and joint competences listed in detail; • Residual authority with federal subjects	• Two-thirds majority in both houses of parliament for constitutional laws	• Federal state institutions to effect policy coordination; • Disagreements over competences to be arbitrated by Constitutional Court; • Disagreements over implementation to be resolved in existing negotiation format or separate conciliation mechanism	• Reduction of military capacity up to demilitarization	• Option for Transnistrian Secession	• Integrated system of international, domestic, economic, military and political guarantees, including enforcement mechanisms
Ukrainian Plan (2005)	• Special status for Transnistria	• Division of powers to be established in organic special-status law	• Joint drafting of special-status law	• Conciliation Committee with international participation to resolve disputes over compliance with/ interpretation of special-status law		• Option for Transnistrian Secession	• Domestic legal and multilateral international guarantees; • Guarantor states and OSCE entitled to further international legal steps in case of non-compliance
Moldovan Framework Law (2005)	• Special status for Transnistria	• Division of powers to be established in organic special-status law	• Joint drafting of special-status law		• Transnistrian demilitarization and Russian withdrawal as preconditions for settlement		• A system of internal guarantees to accompany the special-status law
Moldovan Package Proposals (2007)	• Special status for Transnistria	• Division of powers to be established in special-status law	• Joint drafting of special-status law • Proportional representation for Transnistria in parliament • Representation in government, Constitutional and Supreme Courts, Security Council, Prosecutor-General's Office and Interior Ministry	• Disagreements over competences to be arbitrated by Constitutional Court	• Moldova as a neutral, non-aligned state • Russian withdrawal • No foreign military bases or facilities in Moldova	• Option for Transnistrian Secession	• A system of internal legal, political and economic guarantees • International mission under OSCE mandate to monitor demilitarisation and creation of joint armed forces

In the case of the conflict over Transnistria, a similar declaration by Moscow, or possibly a joint declaration by Moscow and Chisinau, subsequent to a final settlement of the status of Transnistria that this settlement constitutes the full and final implementation of the 1992 Ceasefire Agreement would provide a further international guarantee, strengthening also the future international protection of Moldova's sovereignty and territorial integrity alongside a guarantee for Transnistria's self-governing status.

Finally, it is worth considering the case of the Åland Islands. Here, a dual constitutional and legal protection in the domestic legal order of Finland is combined with an international anchor in the form of a report by the League of Nations on the recommended settlement in 1921 on the basis of which the first Autonomy Statute for the Åland Islands was drawn up. Linking a final status determination for Transnistria with a UN Security Council Resolution (or, less preferably a General Assembly Resolution) could provide yet another international guarantee satisfying concerns of both sides.

The distribution of powers

All existing proposals recognise the importance of distributing powers clearly between Chisinau and Tiraspol, but differ in the level of detail and nature of their approach. Especially in post-conflict settings, it is potentially problematic to operate with exclusive and joint competences in the way in which the CSCE Report, the Kozak Memorandum, and the Mediator Proposals do. Rather than having two lists of exclusive competences, a multiple asymmetric federacy arrangement lends itself more to clearly defining the competences of the federated entities (which could be different for Tiraspol compared to Komrat and/or Bender) while leaving all others (i.e., anything not specifically assigned to an entity), and thus residual authority, to the centre. At the same time, this would not preclude mentioning a few specific competences for the centre (such as defence, fiscal and currency policy, citizenship) as long as this is understood as an open-ended list including all but those powers specifically assigned to an entity. This is the pattern of distributing powers in a number of comparable cases, including Belgium (e.g., Brussels) and Ukraine (Crimea). In Moldova itself, this model currently applies to Gagauzia and should be extended as a principle of constitutional design (but not necessarily in the specifics of the substance of assigned powers) to a settlement with Transnistria in order to preserve the uniformity of the legal order of Moldova.

In the case of South Tyrol (Italy), a different approach to distributing competences has been adopted which distinguishes between exclusive state competences and concurrent competences (i.e., shared between state and region), while all other policy areas not specifically reserved for the centre fall automatically under the remit of regional legislative competence. Thus, regions are sources of residual authority. This approach is also taken in the 2005 Constitution of Iraq and the 1995 Dayton constitution for Bosnia and Herzegovina (albeit the latter without providing for concurrent competences).

The use of concurrent competences (occasionally also referred to as shared or joint competences) makes it worthwhile considering the notions of primary and secondary legislative competences, implicitly reflected in the 2004 Mediator Proposals. This distinction has its source in the legal boundaries to which they are confined. Primary legislative competences (i.e., the areas in which Transnistria/Gagauzia/Bender would enjoy exclusive powers) would then only have constraints in the Moldovan constitution and the country's international obligations. Secondary legislation, that is legislation in areas of potentially concurrent/joint/shared competences, would be constrained by framework legislation in which Chisinau determines the basic principles of legislation while the federated entities make the detailed arrangements as they are to apply in their territories. As there are normally also provisions for additional delegated powers (i.e., areas in which the centre has exclusive legislative competence but delegates this to the entity), the

notion of tertiary legislative competence might be useful constraining local legislation in two ways. First, it is only in specifically 'delegated' policy areas beyond the stipulations of a constitutional or other legal arrangement defining entity competences in which such competence could be exercised. Second, entity legislation would have to comply with a range of particular constraints specified in individual cases of delegated legislative competence, as well as with the more general constraints imposed on primary and secondary competences.

Guarantees for the distribution of powers between centre and federated entity/entities work on a similar basis as they do for territorial status: primarily through constitutional and other forms of legal entrenchment. Territorial state construction, including the distribution of powers between different layers of authority is normally enshrined in some form in a country's constitution. This guarantee mechanism, thus, derives its protective power from the status that the constitution has in the legal order, including crucially procedures for constitutional amendment. The constitution of Italy, for example, defines a variety of exclusive competences for the centre and areas in which centre and regions concurrently exercise legislative powers, leaving all other policy areas in the competence of regions. Constitutional amendments require an absolute majority in both chambers of the Italian parliament. Unless they were carried by a two-thirds majority in both chambers, constitutional amendments can be challenged by a referendum if at least 20% of the deputies of one chamber, 500,000 voters or five regional legislative assemblies demand a referendum. A second layer of protection for the competences required by the regions in Italy exists in the form of the constitutional laws that establish their respective regional autonomy statutes. These statutes are more detailed than the constitutional provisions, but are protected as constitutional laws by the same amendment (or replacement) procedures as changes to the constitution itself.

Similar principles apply to the protection of the distribution of powers between the Åland authorities and the government in Finland. However, the parallel majority required here concerns a vote in the Finnish parliament (subject to the same provisions required for constitutional amendments) and in the Åland legislature (with a minimum two-thirds majority in favour). Even though these arrangements do not give an option for a referendum, they nonetheless represent a stronger degree of protection as they directly involve the entity rather than its representatives in the centre and as they elevate the Åland autonomy statute to a level comparable to the constitution itself because of the required amendment procedures in the Finnish parliament. At the same time, the 1991 Act on the Autonomy of Åland also requires consultation with, and the consent of, the Åland parliament before any Constitutional Act or another State Act 'of special importance to Åland' can enter into force in Åland. In the case of the settlement of the Transnistrian conflict, such a provision could prove useful to assure the Transnistrian of additional guarantees for the future protection of its status, including by naming particular areas of legislation if deemed necessary by the Sides.

The constitutions of Ukraine and Crimea offer another example of how a distribution of competences between centre and entity can be guaranteed. The Ukrainian constitution includes a separate title on Crimea which lists in detail the areas in which the Crimean authorities have law-making and other regulatory competences. Any changes to this title require a two-thirds majority in the Ukrainian parliament. The Crimean constitution, approved by a Law of Ukraine, spells out the relevant competences in greater detail and restricts the ability of the Crimean parliament to initiate legislation that would limit the powers of Crimean authorities as determined by the Constitution and other laws of Ukraine to situations in which such limitations have secured prior approval in a local (advisory) referendum. This, however, constitutes only a relatively weak guarantee against potentially pro-centralising Crimean authorities.

The Iraqi constitution of 2005, in contrast, goes much further in protecting the powers granted to the regions: it specifically provides that articles of the constitution may not be amended if they diminish the powers of the regions unless approval for such amendments is gained in the legislature and in a referendum in the region concerned. Under the 2005 Iraqi constitution, only one region was specifically recognised—Iraqi Kurdistan—while general provisions were made for the formation of additional regions. For Moldova, the question arises to which extent different guarantees might be considered for Transnistria that may not apply in the same way to other entities such as Gagauzia and potentially Bender. If this were deemed useful and feasible, competences assigned to Transnistria as part of a final settlement and entrenched in the constitution and other legislation could be additionally protected by requiring any amendments to be subject to a (qualified) majority in the Transnistrian parliament and/or a referendum in the entity. A referendum may or may not be mandatory for changes to (particularly specified/pre-determined) areas of Transnistrian legislative competence. If not mandatory, trigger mechanisms, such as those specified in relation to the passage of constitutional laws in Italy, could be considered (e.g., a request by certain percentage of deputies in the Transnistrian legislature or of voters registered in Transnistria).

In a number of comparable cases, international guarantees for the distribution of competences exist as well, mostly indirectly by way of guarantees of a whole settlement as discussed in the preceding section on status guarantees.

Power sharing

Power-sharing arrangements can be established qua representation and participation rules across the three branches of government (executive, legislature, and judiciary) and the civil service.

Executive power sharing is often seen as central among power-sharing arrangements and taken to include representation in the executive, in this case of representatives of the territorial entities concerned (i.e., Transnistria/Gagauzia/Bender). Representation of particular segments of society, including those defined on the basis of territory, can be achieved in different ways. Most relevant for the proposed multiple asymmetric federacy would be through a formal arrangement that makes the heads of the federated executives members of the central cabinet (and has a similar requirement for line ministries). Moldova already has experience with this mechanism in relation to Gagauzia. It would guarantee a minimum of representation without the need for unwieldy, overblown executives, and it would serve as one mechanism for policy coordination (see below). In line with the Kozak Memorandum, heads of federated executives could be given deputy prime ministerial positions, and meaningful representation of the federated entities at the centre could be further increased by creating a special ministry (or ministries or ministerial offices) to deal with affairs of the entities (similar to the UK Secretaries of State for Scotland/Wales/Northern Ireland or the Minister for London between 1994 and 2010).

As far as legislative power sharing goes, a multiple asymmetric federacy arrangement would not require a bicameral system as foreseen in the Kozak Memorandum or the Mediator Proposals. Representation of the entities can be ensured through the choice of an electoral system that results in proportional outcomes. In the case of Moldova, because of the proposed territorial state construction, open or closed List-PR in a single state-wide constituency (possibly with threshold exemptions for regional parties), plurality single-member (e.g., 'first-past-the-post' or Alternative Vote) or preferential multi-member constituencies (e.g., Single Transferable Vote) would all result in reasonably proportional outcomes.

In terms of the effective participation dimension of power sharing, the parties could agree the use of qualified and/or concurrent majorities for parliamentary decisions in specific areas (either pre-determined or triggered

according to a particular procedure), thus establishing a limited veto power for territorial entities even in the absence of an upper house. Such an arrangement, however, would also require that members of parliament 'designate' themselves as representing a particular territorial entity (i.e., Transnistria/Gagauzia/Bender).

Judicial power sharing could be assured through mandatory representation of judges nominated by the legislative bodies of the federated entities in the highest courts, especially the constitutional court and/or the supreme court. In each of the entities, a regional branch of these courts could be established, serving as highest-instance court for matters pertaining to the legislative framework of the entity in question, while still being part of the unified judicial system of Moldova. Similar to the proposals in the Kozak Memorandum, a transitional period could require qualified majorities for decisions to be adopted in the Constitutional Court.

In order to strengthen links between the centre and the federated entities, giving the latter a stake also in the political process of Moldova as a whole, proportional representation, including at senior levels, could be required for the civil service. For a transitional period, this could also include differential recruitment in order to overcome historically grown imbalances. The policing bill for Northern Ireland, for example, makes it mandatory to recruit new members of the police force in equal numbers from the Catholic and Protestant communities, while the constitution of Macedonia stipulates that equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life is guaranteed under the constitution as amended by the Ohrid Framework Agreement.

When it comes to guarantees for power-sharing arrangements, it is important to bear in mind that especially legislative power sharing itself serves as an important guarantee mechanism: by requiring qualified or concurrent majorities for certain legislative acts, provisions of conflict settlements can be protected against unilateral abrogation. This, of course, extends to power-sharing arrangements as well, which are otherwise enshrined in constitutions and other legislative acts regulating the implementation and operation of conflict settlements. By way of example, the Belgian constitution offers a number of good examples for constitutional guarantees of power sharing. Executive power sharing is guaranteed by a provision that requires the cabinet (minus the office of the prime minister) to be composed in equal numbers of members of the French and Dutch-speaking communities. It guarantees legislative power sharing, qua representation, by providing for a specific number of Senators from each of the regions and communities, and for a proportional electoral system to the House of Representatives. The participatory dimension of power sharing is enshrined in the constitution for legislation is particular policy areas by requiring a majority of the votes cast in each linguistic group in each House for the approval of relevant bills. Power sharing in the judiciary, qua representation, is guaranteed more indirectly in the constitution by providing for a High Council of Justice, composed of two colleges of equal size made up of members of the French and Dutch-speaking communities, respectively, with competence for the nomination and appointment of judges. Similar provisions in one or more areas of power sharing can be found in a number of other conflict settlements, including the Constitution of Bosnia and Herzegovina under the Dayton Accords, the Iraqi constitution of 2005, the constitution of Macedonia and the constitution of Bougainville.

In the case of a settlement of the Transnistrian conflict, some power-sharing provisions will require entrenchment in the constitution and others in a 'special status law'. Thus, provisions relating to specific parliamentary voting procedures (qualified or concurrent majorities) and the policy areas to which they apply or the procedure by which they are triggered should be enshrined in the constitution. Similarly, the composition of a constitutional court (including the prescription of a nominations or appointments procedure) and its decision-making procedures should be part of the constitution. Provisions for executive

power sharing, such as the co-optation of members of the Transnistrian executive into the corresponding bodies at the centre, the creation of a Transnistria ministry, and any regulations for recruitment, appointment and promotions in the civil service would, in line with existing international practice, be better enshrined in a 'special status law', thus also enjoying additional guarantees derived from the mechanisms that protect such a law from unilateral change.

Dispute resolution

Similar to power sharing, mechanisms and procedures for dispute resolution serve in part as guarantees while also requiring guarantees for their effective implementation and operation. As a guarantee mechanism, dispute resolution is about the forms of redress that the Sides would have access to, for example, if the federated entity considers that the central government has overstepped its legislative competence and passed laws that infringe on entity competences.

The existing proposals are relatively silent on this important dimension of sustainable conflict settlement, yet to the extent that there is consensus it extends to two particular areas. First, there is a recognised need for judicial review and arbitration, including considering the constitutionality of legislation for the implementation of existing agreements and potentially involving the Constitutional Court as ultimate arbiter, as practised in the case of South Tyrol, Åland Islands, Bosnia and Herzegovina, and Ukraine. Closely connected to this is the issue of burden of proof. For example, in both the cases of South Tyrol and the Åland Islands, it is upon state authorities to challenge legislative acts of the entities and to do so within a prescribed time frame of two and four months, respectively. In other words, entities do not have to prove that their legislation complies with the overall legal framework of the state, but the burden of proof lies with the central government. More generally, the underlying principle here is that the side that challenges a particular law or policy needs to prove its case. In the case of Moldova, an option of referral to the constitutional court should be considered in the case of any disputes, for example over the exercise of legislative competences and their compliance with the country's constitutional order and international obligations. Such a procedure can be guaranteed by enshrining this mechanism of dispute resolution in the constitution as one of the tasks in the remit of the constitutional court, as is the case with the constitutions of Belgium, Bosnia and Herzegovina, and Ukraine. As part of a special status law, such a guarantee could be further specified by determining who has access to this form of legal redress, e.g., the central and entity governments, a specified number of deputies in the central and entity parliaments, and/or private citizens.

While it is clearly important to have procedures judicial review and arbitration in place, other mechanisms might be useful to prevent recourse to such ultimate mechanisms. This is another area where some, at least implicit, consensus exists in the form of establishing specific conciliation mechanisms to deal with the interpretation and implementation of a settlement agreement. The Belgian constitution offers a good example here with the so-called 'alarm bell' mechanism. Under this provision, a motion signed by at least three-quarters of the members of one of the linguistic groups can trigger a suspension of parliamentary procedure and a delay in a vote on bill that the members of that group consider damaging for relations between the Communities. The bill would then be referred to the Council of Ministers to reconsider and, if necessary amend, the bill before presenting it again to parliament for a vote. This procedure can only be invoked once by the same group for the same bill and does not apply to laws requiring a special majority or budget laws. A similar procedure is enshrined in the Macedonian constitution. While requiring a concurrent majority in the parliament for decisions that affect cultural/identity matters, the constitution foresees the possibility of disputes over the applicability of this voting procedure and requires such disputes to be resolved by the Committee on Inter-Community

Relations, itself a statutory body established by the constitution.

The underlying principle of a mandatory conciliation procedure triggered in a particular way, exemplified by the cases of Belgium and Macedonia, is somewhat reflected in the 2005 Ukrainian proposals and should be considered for inclusion in a final settlement. It could be guaranteed as a permanent mechanism in the Moldovan constitution or as a feature of a transitional, time-limited nature in a special status law.

In addition to conciliation mechanisms, which are normally invoked after a difference cannot be resolved in another way (but before taking the matter to a court), joint committees and implementation bodies should be established to find common interpretations for specific aspects of agreements and regulations and to coordinate the implementation of specific policies at national and regional levels, including the joint drafting of implementation legislation. Here, the Sides might wish to enter into a formal agreement on making permanent the existing working groups and use them as coordination bodies and thus as another mechanism for dispute avoidance.

The protection of identities

More narrowly, the protection of identities is encapsulated in the issue of potential future unification with Romania. This could be addressed similarly to what already exists in the settlement for Gagauzia (and has been widely accepted in most existing proposals in relation to Transnistria), namely that Transnistria should have an option of seceding from Moldova in case of unification with Romania.

However, this narrow reading of identity protection as simply the 'Romanian' dimension of a final settlement masks a broader issue that affects all the communities resident in Transnistria and, for that matter, in Moldova as a whole. In the vast majority of similar conflicts, the protection of the rights of individuals and communities to have, express, and develop a specific ethnic, linguistic, cultural, and/or religious identity is addressed by making relevant international standards directly applicable, by enshrining particular rights into a constitution, and by enacting human and minority rights bills, including mechanisms for implementation, monitoring, complaints and redress. Relevant examples in this respect extend, among others, to the 1995 Dayton Accords for Bosnia and Herzegovina, the 2001 Ohrid Framework Agreement for Macedonia, the 1998 Northern Ireland Agreement, and the current arrangements in Belgium.

Thus, the Macedonian constitution as amended pursuant to the Ohrid Framework Agreement specifically recognises members of communities other than ethnic Macedonians as equal citizens who have the right freely to express, maintain and develop their identity, that the protection of their identities is guaranteed by the state, and that they have the right to establish their own cultural and educational institutions. Given the centrality of language to identity, the constitution also stipulates that any language other than Macedonian which is spoken by at least 20% of the population has the status of an official language alongside Macedonian and that members of communities have the right to instruction in their language in primary and secondary education, while also requiring them to study Macedonian. Alongside this constitutional guarantee, and as a further procedural guarantee (in the form of a legislative power sharing mechanism), the constitution also requires that for laws that directly affect culture, use of language, education, personal documentation, and use of symbols, a concurrent majority is required among deputies belonging to communities other than ethnic Macedonians.

In the case of Moldova and Transnistria, relevant provisions for the protection of people's individual identities should apply to the entire territory of the state. Apart from a specific recognition of Moldova's diversity and a constitutional prohibition of any form of discrimination, guarantees for such provisions should thus be enshrined in the constitution in several ways: as specific enumeration of rights, by requiring concurrent or qualified majorities for the passage of any laws affecting such rights, and in the form of the direct applicability of

relevant international standards (e.g., the Council of Europe's Framework Convention for the Protection of Minorities). In addition, any special status law for Transnistria could require similar provisions to be incorporated into a Transnistrian constitution as a way of ensuring that the different communities resident in Transnistria are equally protected within the framework of Transnistrian legislation. In terms of formal and informal agreements, the Sides may wish to establish a framework of regulations and standards for a common national curriculum, including minimum standards for language acquisition in the relevant official languages.

The Russian dimension

How to deal with the questions of demilitarization, neutrality and the presence of foreign troops could be the most decisive issue to determine whether a negotiated settlement for Transnistria will be possible. It will require an international agreement, rather than merely an arrangement between Chisinau and Tiraspol. At the same time, it could also be an area where a 'grand bargain' among all the parties involved can be achieved, linking these three issues to those of the territorial integrity and sovereignty of Moldova, thus including interlocking protections for all sides involved.

As a model for such an arrangement, the 1991 'Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia' should be considered. Here, the nineteen states participating in the Paris Conference on Cambodia signed, among others, this agreement in which Cambodia committed itself to a wide range of principles for its future domestic and international conduct, including to 'maintain, preserve and defend its sovereignty, independence, territorial integrity and inviolability, neutrality, and national unity', to entrench its 'perpetual neutrality ... in the ... constitution', 'refrain from entering into any military alliances or other military agreements with other States that would be inconsistent with its neutrality', and 'refrain from permitting the introduction or stationing of foreign forces, including military personnel, in any form whatsoever, in Cambodia, and to prevent the establishment or maintenance of foreign military bases'. In return, the other signatory states undertook 'to recognize and to respect in every way the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia.'

A similar set of arrangements was included in the 2004 Annan Plan for Cyprus, drawing in part on the existing Treaty of Guarantee, and determining its applicability to the independence, territorial integrity, security and constitutional order of the United Cyprus Republic, the territorial integrity, security and constitutional order of the constituent states. Moreover, the Annan Plan proposed that Cyprus shall not put its territory at the disposal of international military operations other than with the consent of both constituent states and the consent of Greece and Turkey. This is a somewhat softer option compared to the absolute requirement of neutrality in the Cambodian settlement. However, the Foundation Agreement, also part of the 2004 Annan Plan, requires that there be no paramilitary or reserve forces or military or paramilitary training of citizens and that all weapons, except for licensed sports guns, be banned.

While both the situations in Cambodia and Cyprus were clearly different from that in Moldova, the way in which they were dealt with in the relevant (proposed) settlements is highly relevant as a broad international guarantee because it addresses the core issues of the Russian dimension of the conflict, while at the same time providing an international anchor for Moldova's sovereignty and territorial integrity. Under such an arrangement, Moldova would gain a Russian commitment to its sovereignty and territorial integrity in exchange for agreeing not to join NATO. The latter dimension—permanent neutrality—in turn would need to be enshrined in the Moldovan constitution and a provision would need to be made to exempt this article from any future constitutional

amendment. The Sides may also wish to consider some degree of demilitarisation.

Security guarantees

Security guarantees are part of an overall guarantees package across the four dimensions of guarantee options. In the sense of 'hard' security guarantees (as opposed to issues related to the security of territorial status, power-sharing arrangements, or identities), they warrant separate treatment. In the specific context of the Transnistrian conflict they relate to three particular aspects: the future of the existing Joint Peacekeeping Force, the integration (or not) of Moldovan and Transnistrian security forces, and a range of issues related to the so-called Russian dimension, including questions of neutrality and demilitarisation. As the latter aspect has been dealt with in the previous section, I shall focus on the former two aspects.

A comparative analysis of existing proposals reveals both a lack of detail in terms of relevant provisions and a similar lack of consensus among the three existing proposals that touch upon security guarantees. To the extent that any provisions are included, the 1997 Moscow Memorandum proposes the continuation of the Joint Peacekeeping Force, while the 2004 Mediator Proposals merely note that an integrated system of international, domestic, economic, military and political guarantees, including enforcement mechanisms needs to be worked out as part of the negotiations for a final settlement. The 2007 Moldovan Package Proposals suggest that an international mission under OSCE mandate be set up to monitor demilitarisation and the creation of joint armed forces.

There is, however, quite a rich international practice beyond Moldova on how to deal with security guarantees in similar situations, where conflict settlements include provisions for both peacekeeping forces and, broadly speaking, security sector reform of which questions pertaining to the integration of forces are one important dimension. Peacekeeping forces usually fulfil a dual role: they provide hard security guarantees in the form of an armed force ensuring that there is no resurgence of violence and they monitor and verify the implementation of an entire agreement or specific parts thereof. This is the case, for example, with relevant provisions in the 2004 Annan Plan for Cyprus, in the 1999 ceasefire agreement for the Democratic Republic of Congo, and in the 2003 Linas-Marcoussis Agreement for Ivory Coast.

Two further sets of arrangements appear particularly relevant for the context of the settlement of the Transnistrian conflict. In the 1998 Guinea-Bissau agreement, the ECOMOG peacekeeping force that is mandated under the terms of this agreement assumes additional responsibility for border control. In the 1997 Protocol on Military Issues that is part of the negotiated settlement of the Tajik civil war, the existing CIS peacekeeping force was placed under UN supervision while carrying out specific tasks related to the disarmament of opposition forces and the decommissioning of their weapons.

Security guarantees, to the extent that they relate to the presence of a peacekeeping force in Moldova, could thus take the following form in a final settlement. An international observer mission under UN mandate could assume overall authority over the existing peacekeeping force and also integrate the current EUBAM (the latter in all probability with an adjusted mandate and deployment area). It should also incorporate the currently existing Joint Control Commission and the working group on security issues, adding to them an international component and assuming their tasks. The existing security zone and checkpoints would need to be dismantled and the existing peacekeeping forces should be withdrawn into barracks. Investigation of any incidents should be carried out by the UN-mandated international observer mission, whose mandate would also include monitoring and verifying the implementation of all aspects of a final settlement agreement, including its security aspects.

In line with the 1993 CSCE Report No. 13, the Sides should consider demilitarisation of

Moldova, i.e., disbanding all military forces. A border police could be retained and operate in cooperation and under the initial supervision of a re-mandated EUBAM and under overall control of the international observer mission. Police forces, operating within a unified legal and constitutional order of Moldova, could nonetheless be placed under the separate control of the Sides, thus requiring only minimal integration. This practice of local control of police forces is common in many states and could be guaranteed in the constitution and/or a special status law by assigning competence for law and order to the federated entities, as is the case, for example, in Northern Ireland.

These security provisions should be codified in a separate protocol, and should be subject to review after five years, with any changes requiring the consent of both Sides and the guarantors as foreseen in similar ways in existing proposals.

IV. CONCLUSION

While the case of the Transnistrian conflict in Moldova has many distinct features, it is not wholly unique among contemporary intra-state territorial disputes. Many of these involve similar territorial disputes and have implications beyond the immediate locality of the conflict, including external powers with significant stakes in the outcome. On the basis of an analysis of existing proposals for the settlement of the conflict over Transnistria, a multiple asymmetric federacy arrangement negotiated within the current 5+2 format of talks seems a reasonable framework within which the conflict parties might agree a permanent set of institutions that provides a full and final, as well as sustainable settlement.

A key part of such a settlement will be the extent to which guarantees for both sides are built into the settlement and the extent to which it will be entrenched in the domestic legal and constitutional order of Moldova and in international law. On the basis of the foregoing discussion, summarised in Table 2 below, four different types of guarantees, reflected to some extent across all existing proposals, are of relevance and are cutting across the different substantive issue areas on which the Sides need to reach agreement.

First, there are in/formal agreements for a whole settlement or specific provisions that detail how parties envisage operation and implementation of settlement provisions. For example, the parties should agree a range of principles that determine their mutual conduct in terms of coordinating legislation and policy. This could include the creation of consultation bodies and a determination of their working procedures. Another option might be to make the currently existing Working Groups permanent or extend their existence into a transitional period, both with appropriately amended mandates and terms of reference, and extending to security arrangements.

Second, the different federated entities will all require status entrenchment in the legal order and the constitution of Moldova that guarantee their territorial status, protect the competences that they have been assigned, and ensure the operation of appropriate power-sharing and dispute resolution mechanisms, as well guaranteeing individual and communal rights. This has already been accomplished for the status of Gagauzia: a constitutional anchoring of the status of Gagauzia as a special entity in Moldova (currently Article 111 of the constitution) and an organic law (dating back to 1995) that specifies, among other things, the competences of Gagauzia. This could be applied to settlements for Transnistria and possibly Bender. At present, changes to his law require a three- fifths majority in parliament. This could be strengthened, in line with suggestions in the Kozak Memorandum and the Mediator Proposals, by requiring the consent of the parliament of the respective entity for any changes to its status or competences.

Third, ‘hard’ and ‘soft’ international guarantees will be useful not only to entrench any settlement internationally but also commit external parties to a settlement. This could take two forms in the case of the Transnistrian conflict. On the one hand, achieving a settlement in the current 5+2 format would involve Ukraine

and Russia as guarantor states, with OSCE as the lead mediator and the US and EU as observers. This is clearly foreseen in a number of past proposals. In addition, a bilateral (Moldova- Russia) or multilateral treaty (involving all states parties involved in the 5+2 format), along the lines of the 1991 Cambodia Agreement or the 2004 Annan Plan for Cyprus could prove useful and effective in assuring the parties. Finally, international practice would also seem to recommend provisions for the direct applicability and/or incorporation into domestic law of international treaties, conventions and standards for the protection of human and minority rights.

Fourth, security guarantees, need to address issues of transition from current security arrangements alongside longer-term issues of security for both Sides. Here the suggestion is to establish a UN-mandated international observer mission to assume overall control of security arrangements and monitor and verify the implementation and operation of the full and final settlement, including all its security provisions.

These guarantee options are just that—options that the Sides may want to consider as and when they agree on the substance of a final settlement of their conflict. They cannot replace the settlement itself, but they can give the sides confidence that any agreement they reach can be appropriately secured in the domestic legislation and the Moldovan constitutional order, as well as in international law.

Table 2: Guarantee Options for a Final Settlement of the Transnistria Conflict

	Territorial Status	Distribution of Powers	Power Sharing	Dispute Resolution	Russian Dimension	Protection of Identities	Security Guarantees
In/formal Agreements	• Agreements on interpretation of final settlement (e.g., clarification of meaning of mechanisms and procedures) • Agreements on mechanisms and procedures for cooperation between the Sides in each substantive area of the final settlement • Consultation/implementation bodies for different policy areas • Permanence of existing Working Groups to act as coordination bodies					• Permanent coordination committee on education policy	• Special protocol on security issues, subject to review after five years, and changes requiring consent of the Sides and guarantors • Creation of an internationally enlarged version of the JCC
'Simple' Legislation: "Special Status Law"	• Provisions on territorial status, subject to specific voting procedure for passage and amendment, including parallel consent in Transnistrian legislature	• Provisions on competences, subject to specific voting procedure for passage and amendment, including parallel consent in Transnistrian legislature • Requirement for any changes to be approved by local referendum if majority in Transnistrian parliament below 60% or if demanded by at least 20% of deputies or locally registered voters	• Provisions on inclusion of members of Transnistrian executive in corresponding bodies at the centre and/or creation of a Transnistria ministry subject to specific voting procedure for passage and amendment, including parallel consent in Transnistrian legislature	• Provisions on a time-limited mandatory conciliation procedure and trigger mechanism subject to specific voting procedure for passage and amendment, including parallel consent in Transnistrian legislature		• Recognition of diversity • Prohibition of discrimination • Enumeration of 'identity' rights • Concurrent or qualified majorities for the passage of any laws affecting identity rights • Direct applicability of relevant international standards	• Competence for policing/law and order functions assigned to entity, any changes subject to parallel consent in Transnistrian legislature

Constitutional Law	• Entrenchment of the principle of territorial self-governance	• Detailed list of exclusive (primary legislative) and concurrent (secondary legislative) competences • Option for additional delegated (tertiary legislative) competences	• Provisions relating to specific parliamentary voting procedures (qualified or concurrent majorities) and the policy areas to which they apply or the procedure by which they are triggered • Composition of constitutional court (including the prescription of a nominations or appointments procedure) and its decision-making procedures • Equitable representation in public bodies at all levels	• Competence of the constitutional court for arbitrating disputes between centre and federated entities • Provisions on a permanent mandatory conciliation procedure and trigger mechanism	• Permanent neutrality enshrined in the constitution as 'unamendable' article	• Recognition of diversity • Prohibition of discrimination • Enumeration of 'identity' rights • Concurrent or qualified majorities for the passage of any laws affecting identity rights • Direct applicability of relevant international standards	• Competence for policing/law and order functions assigned to entity, any changes subject to parallel consent in Transnistrian legislature
International Law	• Status settlement linked with bi/multilateral treaty guaranteeing the whole settlement • UN Resolution, including a mandate for an international observer mission to monitor and verify implementation and assume overall responsibility for security arrangements • Russian/Moldovan Declaration of Conflict Settlement pursuant to 1992 Ceasefire Agreement						

Notes

* The views expressed in this paper are those of the author alone, who writes in his capacity as an independent academic, and not of any other organisation or individual.

[#] A federacy arrangement constitutionally entrenches extensive self-rule for specific entities. It does not necessitate territorial sub-divisions across the entire state territory. In other words, federacy arrangements are a feature of otherwise unitary states. Examples include the Åland Islands (Finland) and South Tyrol (Italy), as well as Gagauzia (Moldova) and Crimea (Ukraine). They can apply to multiple entities in an existing state which need not have the same status or identical level of competences. For example, Italy has five regions with different special autonomy statutes, while in Denmark, such an asymmetric state of affairs applies o Greenland and the Faroer Islands.

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